

1 TOMIO B. NARITA (SBN 156576)
2 JEFFREY A. TOPOR (SBN 195545)
3 SIMMONDS & NARITA LLP
4 44 Montgomery Street, Suite 3010
5 San Francisco, CA 94104-4816
6 Telephone: (415) 283-1000
7 Facsimile: (415) 352-2625
8 tnarita@snllp.com
9 jtopor@snllp.com

10 Attorneys for defendant
11 First Revenue Assurance, LLC
12 sued herein as First Resolution Corporation

13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA

15 STEPHEN LEE, individually and on)
16 behalf of all others similarly)
17 situated,)

18 Plaintiff,

19 vs.

20 FIRST REVENUE ASSURANCE)
21 CORPORATION; DOES 1)
22 THROUGH 25, INCLUSIVE,)

23 Defendants.)
24
25
26
27
28

CASE NO.: C 07 6066 MHP

ANSWER TO COMPLAINT

1 Defendant FIRST REVENUE ASSURANCE, LLC sued as First Resolution
2 Assurance Corporation (“Defendant”) hereby submits the following Answer to the
3 Complaint filed in this action by plaintiff STEPHEN LEE (“Plaintiff”):

4 1. In answering Paragraph 1 of the Complaint, Defendant admits that
5 Plaintiff brings this action pursuant to the Fair Debt Collection Practices Act, 15
6 U.S.C. § 1692 *et seq.* Except as herein admitted, the remaining allegations on
7 Paragraph 1 are denied.

8 2. In answering Paragraph 2 of the Complaint, Defendant admits that
9 Plaintiff alleges that jurisdiction of this Court arises under 28 U.S.C. § 1331 and
10 15 U.S.C § 1692k(d). Except as herein admitted, the remaining allegations of
11 Paragraph 2 are denied.

12 3. Defendant admits, on information and belief, the allegations of
13 Paragraph 3 of the Complaint.

14 4. In answering Paragraph 4 of the Complaint, Defendant admits that
15 First Revenue Assurance, LLC is a Delaware limited liability corporation that
16 maintains a place of business in Denver, Colorado, and that it has, at times,
17 attempted to collect debts. Except as herein admitted, the remaining allegations of
18 Paragraph 4 are denied.

19 5. Denied.

20 6. In answering Paragraph 6 of the Complaint, Defendant admits on
21 information and belief that Plaintiff incurred a financial obligation to Cingular
22 Wireless and that he became delinquent on the account. Defendant lacks
23 sufficient knowledge to form a belief as to the remaining allegations of Paragraph
24 6 of the Complaint and on that basis, denies them.

25 7. Admitted.

26 8. In answering Paragraph 8 of the Complaint, Defendant admits that it
27 sent Plaintiff a letter dated June 18, 2007, the contents of which are self-

1 explanatory. Except as herein admitted, the remaining allegations of Paragraph 8
2 are denied.

3 9. In answering Paragraph 9 of the Complaint, Defendant admits that it
4 sent Plaintiff a letter dated June 18, 2007, the contents of which are self-
5 explanatory. Except as herein admitted, the remaining allegations of Paragraph 9
6 are denied.

7 10. Denied.

8 11. In answering Paragraph 11 of the Complaint, Defendant avers that the
9 contents of its website, www.firstrevenue.com, are self-explanatory. Except as
10 herein admitted the remaining allegations of Paragraph 11 are denied.

11 12. In answering Paragraph 12 of the Complaint, Defendant avers that the
12 contents of its website, www.firstrevenue.com, are self-explanatory. Except as
13 herein admitted the remaining allegations of Paragraph 12 are denied.

14 13. In answering Paragraph 13 of the Complaint, Defendant avers that the
15 contents of its website, www.firstrevenue.com, are self-explanatory. Except as
16 herein admitted the remaining allegations of Paragraph 13 are denied.

17 14. Denied.

18 15. In answering Paragraph 15 of the Complaint, Defendant avers that the
19 contents of its website, www.firstrevenue.com, are self-explanatory. Except as
20 herein admitted the remaining allegations of Paragraph 15 are denied.

21 16. Denied.

22 17. In answering Paragraph 17 of the Complaint, Defendant avers that the
23 contents of its website, www.firstrevenue.com, are self-explanatory. Except as
24 herein admitted the remaining allegations of Paragraph 17 are denied.

25 18. Denied.

26 19. Defendant denies that there is any legitimate basis to certify a class in
27 this case, and therefore denies the allegations of Paragraph 19 of the Complaint.
28

1 20. Defendant denies that there is any legitimate basis to certify a class in
2 this case, and therefore denies the allegations of Paragraph 20 of the Complaint.

3 21. Defendant denies that there is any legitimate basis to certify a class in
4 this case, and therefore denies the allegations of Paragraph 21 of the Complaint.

5 22. Defendant denies that there is any legitimate basis to certify a class in
6 this case, and therefore denies the allegations of Paragraph 22 of the Complaint.

7 23. Defendant denies that there is any legitimate basis to certify a class in
8 this case, and therefore denies the allegations of Paragraph 23 of the Complaint.

9 24. Defendant denies that there is any legitimate basis to certify a class in
10 this case, and therefore denies the allegations of Paragraph 24 of the Complaint.

11 25. Defendant lacks sufficient knowledge to form a belief as to the
12 allegations of Paragraph 25 of the Complaint relating to the plaintiff's alleged
13 knowledge or interest, and on that basis, denies them.

14 26. Defendant denies that there is any legitimate basis to certify a class in
15 this case, and therefore denies the allegations of Paragraph 26 of the Complaint.

16 27. Defendant denies that there is any legitimate basis to certify a class in
17 this case, and therefore denies the allegations of Paragraph 27 of the Complaint.

18 28. Defendant denies that there is any legitimate basis to certify a class in
19 this case, and therefore denies the allegations of Paragraph 28 of the Complaint.

20 29. Defendant denies that there is any legitimate basis to certify a class in
21 this case, and therefore denies the allegations of Paragraph 29 of the Complaint.

22 30. Defendant denies that there is any legitimate basis to certify a class in
23 this case, and therefore denies the allegations of Paragraph 30 of the Complaint.

24 31. Defendant incorporates by reference paragraphs 1 through 31 above,
25 as if fully stated herein.

26 32. Denied.
27
28

1 **AFFIRMATIVE DEFENSES**

2
3 As and for separate affirmative defenses to the Complaint, Defendant
4 alleges as follows:
5

6 **FIRST AFFIRMATIVE DEFENSE**

7 **(Failure to State a Claim)**

8 The allegations of the Complaint fail to state a claim against Defendant
9 upon which relief can be granted.
10

11 **SECOND AFFIRMATIVE DEFENSE**

12 **(Statute of Limitations/Laches)**

13 The purported claims set forth in the Complaint are barred in whole or in
14 part by the applicable statutes of limitation and/or the equitable doctrine of laches.
15

16 **THIRD AFFIRMATIVE DEFENSE**

17 **(Bona Fide Error)**

18 To the extent that any violation of law occurred, which Defendant expressly
19 denies, said violation was not intentional and resulted from a bona fide error
20 notwithstanding the maintenance by Defendant of procedures reasonably adapted
21 to avoid any such error.
22

23 **FOURTH AFFIRMATIVE DEFENSE**

24 **(Unclean Hands)**

25 The allegations in the Complaint and relief requested are on information and
26 belief barred in whole or in part by the doctrine of unclean hands.
27
28

FIFTH AFFIRMATIVE DEFENSE

(No Wilful Conduct)

Defendant acted in good faith at all times in their dealings with Plaintiff, and if any conduct by Defendants is found to be unlawful, which Defendants expressly deny, such conduct was not willful and should not give rise to liability.

SIXTH AFFIRMATIVE DEFENSE

(Failure to Mitigate)

Plaintiff, although under a legal obligation to do so, has failed to take reasonable steps to mitigate any alleged damages that he may have and is therefore barred from recovering damages, if any, from Defendant.

SEVENTH AFFIRMATIVE DEFENSE

(Waiver)

Plaintiff has waived his rights, if any, to recover the relief he seeks in the Complaint based upon his own conduct and admissions with respect to the debt.

EIGHTH AFFIRMATIVE DEFENSE

(Good Faith)

Defendant has, at all material times with respect to Plaintiff, acted in good faith in an effort to comply fully with all relevant federal and state laws.

NINTH AFFIRMATIVE DEFENSE

(Apportionment)

Without admitting that any damages exist, if damages were suffered by Plaintiff as alleged in the Complaint, those damages were proximately caused by and contributed by persons other than Defendant. The liability, if any exists, of all

1 Defendants and/or any responsible parties, named or unnamed, should be
2 apportioned according to their relative degrees of fault, and the liability of this
3 Defendant should be reduced accordingly.

4
5 **TENTH AFFIRMATIVE DEFENSE**

6 **(Supervening Cause)**

7 The causes of action in the Complaint are barred, in whole or in part, to the
8 extent that any injury or loss sustained was caused by intervening or supervening
9 events over which Defendant had or have no control.

10
11 **ELEVENTH AFFIRMATIVE DEFENSE**

12 **(Equitable Indemnity)**

13 To the extent that Plaintiff has suffered any damage as a result of any
14 alleged act or omission of Defendant, which Defendant denies, Defendant is
15 entitled to equitable indemnity according to comparative fault from other persons
16 and/or entities causing or contributing to such damages, if any.

17
18 **TWELFTH AFFIRMATIVE DEFENSE**

19 **(First Amendment)**

20 Defendants' conduct is protected under the First Amendment of the United
21 States Constitution. Plaintiff's proposed interpretation of provisions of the
22 FDCA must be rejected as it would place an unreasonable restraint upon
23 Defendant's First Amendment rights, thereby raising serious constitutional issues.

1 WHEREFORE, Defendant requests judgment as follows:

2 1. That Plaintiff takes nothing by the Complaint, which should be
3 dismissed with prejudice.

4 2. That Defendant recover from Plaintiff costs according to proof.

5 3. That Defendant recover attorney's fees according to proof.

6 4. That the Court orders such other further reasonable relief as the Court
7 may deem just and proper.

8
9 DATED: January 16, 2008

SIMMONDS & NARITA LLP
TOMIO B. NARITA
JEFFREY A. TOPOR

10
11
12
13 By: /Tomio B. Narita/
14 Tomio B. Narita
15 Attorneys for Defendant
16 First Revenue Assurance, LLC
17 sued herein as First Resolution
18 Assurance Corporation
19
20
21
22
23
24
25
26
27
28